17-2991

United States Court of Appeals for the Seventh Circuit

CITY OF CHICAGO,

Plaintiff-Appellee,

v.

JEFFERSON B. SESSIONS, III,
Attorney General of the United States,

Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division, No. 17-cv-05720
The Honorable Harry D. Leinenweber, Judge Presiding

BRIEF FOR AMICI CURIAE STATES OF NEW YORK, CALIFORNIA, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MAINE, MARYLAND, MASSACHUSETTS, NEW JERSEY, OREGON, RHODE ISLAND, VERMONT, AND WASHINGTON, AND THE DISTRICT OF COLUMBIA IN SUPPORT OF APPELLEE

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INTRODUCTION AND INTERESTS OF AMICI

For decades, the amici States—New York, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont, and Washington, and the District of Columbia—have received law-enforcement grants through the Edward Byrne Memorial Justice Assistance Grant (Byrne-JAG) program and its predecessors. Like the City of Chicago, the amici States believe that the U.S. Department of Justice (DOJ) has acted unlawfully in imposing certain new immigration-related conditions on all Byrne-JAG applicants. The amici States thus have a strong interest in Chicago's challenge to the new Byrne-JAG grant conditions and an equally strong interest in opposing DOJ's efforts to impose those unlawful conditions on amici and others while this litigation is pending.

Moreover, as recipients of grants through a variety of formula grant programs that are structured similarly to Byrne-JAG, the amici States also have a strong interest in the broader principles at stake in this suit. As the prior court decisions in this case have recognized, the district court's preliminary injunction was appropriately tailored to ensure that Chicago's funds will not be disbursed to other jurisdictions while the litigation is pending—a development that would prevent Chicago from obtaining meaningful relief at the end of this suit. Under well-established case law,

that correspondence between Chicago's need and the preliminary injunction's scope is sufficient to warrant affirmance of the full injunction, especially because DOJ has failed to show any countervailing interest specific to this case that would necessitate a narrower injunction.

Chicago should not be deprived of the opportunity to obtain meaningful relief simply because the injunction needed to protect its interests also happens to incidentally benefit other Byrne-JAG recipients who object to the new conditions, such as the amici States. Where a grant recipient shows a likelihood of prevailing on a facial challenge to the conditions of a grant from a limited fund—as Chicago has in this case—a preliminary injunction directed at all grants may be necessary to prevent grant funds from being completely disbursed to other jurisdictions during the pendency of the litigation. DOJ's arguments to the contrary are incorrect as a matter of fact and law, and acceptance of those arguments would have wide-reaching adverse consequences for the amici States as recipients of formula grants, and as public entities who at times have needed to obtain broad preliminary injunctions to fully protect our interests during the course of litigation.

Recent events underscore the need for this Court to affirm the district court's injunction in full. Shortly after this Court partially stayed the scope of the injunction pending en banc review, DOJ issued 2017 Byrne-JAG award letters to over 800 jurisdictions across the country, including some but not all

of the amici States. DOJ's issuance of the letters increases the likelihood that the funds Chicago would otherwise receive under the Byrne-JAG formula will be disbursed to other jurisdictions during the pendency of this litigation. While Chicago's challenge to the conditions continues, jurisdictions that received award letters are free to accept the conditions and can begin spending the money immediately, potentially leaving nothing for Chicago even if the city ultimately prevails.

The amici States and hundreds of other jurisdictions stand in the same position as Chicago: forced to choose between forfeiting vital law-enforcement funding, or accepting conditions that are unlawful and may jeopardize relationships with immigrant communities.[1] Restoring the injunction will preserve the ability of Chicago to obtain meaningful judicial relief at the conclusion of this litigation, and serve the public interest by preventing DOJ from imposing harmful conditions on important law-enforcement funding until the legality of those conditions has been resolved.

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[1] Accordingly, several of the amici States and a number of localities have filed their own lawsuits challenging the Byrne-JAG conditions. *See* Amended Compl., *New York v. Sessions*, No. 18-cv-6471 (S.D.N.Y. Aug. 6, 2018), ECF No. 32 (joined by Connecticut, Massachusetts, New Jersey, Rhode Island, Virginia, and Washington); Compl., *Illinois v. Sessions*, No. 18-cv-4791 (N.D. Ill. July 12, 2018), ECF No. 1; Compl., *City of Evanston v. Sessions*, No. 18-cv-4853 (N.D. Ill. July 16, 2018), ECF No. 1 (joined by the U.S. Conference of Mayors, representing approximately 1,400 cities); Compl., *City of New York v. Sessions*, No. 18-cv-6474 (S.D.N.Y. July 18, 2018), ECF No. 1.

ARGUMENT

The District Court Properly Enjoined the Department of Justice from Imposing the Challenged Conditions on Any Byrne-JAG Recipient

A. The Scope of the Preliminary Injunction Was Necessary, and Remains Necessary, to Fully Protect Chicago's Interests During the Pendency of This Litigation.

The purpose of a preliminary injunction is "to protect plaintiff from irreparable injury and to preserve the court's power to render a meaningful decision after a trial on the merits." 11A C. Wright, A. Miller, & M. Kane, *Federal Practice & Procedure* § 2947 (3d ed. Westlaw Apr. 2018). In the grant context, courts have repeatedly recognized that a preliminary injunction may be necessary to protect the interests of a grant applicant who is challenging some aspect of the grant-making process; otherwise, the grant-making agency could disburse the applicant's funds to others during the litigation, leaving nothing for the applicant even if it ultimately prevails.[2]

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[2] *See, e.g.*, *City of Houston v. Department of Hous. & Urban Dev.*, 24 F.3d 1421, 1427 (D.C. Cir. 1994) ("[T]o avoid having its case mooted," a grant applicant must "seek a preliminary injunction preventing the agency from disbursing those funds."); *Population Inst. v. McPherson*, 797 F.2d 1062, 1081 (D.C. Cir. 1986) (granting a preliminary injunction because "if the government in the instant case is permitted to *distribute* the $10 million to other organizations," the grant applicant "will suffer irreparable injury by the loss of . . . funding because this court will be unable to grant effective relief"); *Ambach v. Bell*, 686 F.2d 974, 986 (D.C. Cir. 1982) (per curiam) ("Once the [grant] funds are distributed to the States and obligated, they cannot be recouped. It will be impossible in the absence of a preliminary injunction to

That is precisely the case here. Funding for the Byrne-JAG program—like many other grants the amici States and their localities receive[3]—is based on a single, yearly appropriation by Congress. As the panel majority correctly recognized, "the distribution structure includes explicit provisions for reallocation of funds in some circumstances." *City of Chicago v. Sessions*, 888 F.3d 272, 292 (7th Cir. 2018) (citing 34 U.S.C. § 10156(f)). For example, "funds allocated to Byrne JAG recipients can be withheld as a penalty for non-compliance with other statutory requirements, and those funds are then reallocated to other, compliant, Byrne JAG recipients." *Id.* (citing 34 U.S.C. §§ 20927, 30307(e)).[4] Once funds have been disbursed to properly qualified

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award the plaintiffs the relief they request if they should eventually prevail on the merits."); *cf. County of Suffolk v. Sebelius*, 605 F.3d 135, 141-42 (2d Cir. 2010) (affirming on mootness grounds the dismissal of a challenge to a denial of grant funds, where the funds had been distributed to others during the pendency of litigation).

[3] *See, e.g.*, 29 U.S.C. § 730 (establishing a formula grant for States to provide vocational rehabilitation services to residents, and providing for reallocation of undistributed funds); 42 U.S.C. § 5306 (creating a formula for the Community Block Development Grant and providing for reallocation of unused funds).

[4] The statute also permits DOJ to reserve a certain percentage of funds and reallocate those funds for specific statutory purposes, such as to respond to "extraordinary increases in crime." 34 U.S.C. § 10157(b).

grant recipients, neither DOJ nor a court can claw those funds back to reallocate them to another jurisdiction.[5]

DOJ is thus wrong when it insists (Supp. Br. for Appellant (Br.) at 1-2, 14-16, 24) that the preliminary injunction entered in this case is impermissibly overbroad.[6] The district court's preliminary injunction was appropriately crafted to safeguard the funds that Chicago would otherwise receive under the Byrne-JAG statutory formula, and thereby ensure that the district court could afford Chicago "proper and complete relief" at the end of the litigation. *City of Chicago*, 888 F.3d at 292.

Because DOJ has maintained that it will not issue Byrne-JAG awards without the challenged conditions,[7] an injunction prohibiting application of

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[5] *See, e.g.*, *City of Houston*, 24 F.3d at 1426 ("Funds appropriated for an agency's use can become unavailable . . . if the funds have already been awarded to other recipients. . . . [O]nce the relevant funds have been obligated, a court cannot reach them in order to award relief.").

[6] On July 27, 2018, the district court partially granted Chicago's motion for summary judgment, holding that all of the new immigration-related conditions are unlawful and should be permanently enjoined as to all applicants. *See City of Chicago v. Sessions*, No. 17-cv-5720, 2018 WL 3608564, at *17-18 (N.D. Ill. July 27, 2018). However, in light of this Court's partial stay of the preliminary injunction and the pending en banc proceedings, the district court stayed the portion of the permanent injunction concerning grant applicants other than Chicago. Thus, at present, neither the preliminary nor permanent injunction fully protects Chicago's interests.

[7] *See, e.g.*, Application for Partial Stay Pending Rehearing En Banc in the United States Court of Appeals for the Seventh Circuit and Pending Further Proceedings in this Court (Supreme Court Stay App.) at 37, *Sessions v. City*

the new conditions to Chicago alone could result in Chicago receiving no award even as DOJ disburses Byrne-JAG funds to jurisdictions that compete with Chicago for funds but are willing to accept the new conditions. Indeed, within hours of this Court's entry of a partial stay, DOJ issued award letters to over 800 States and localities across the country, though not to Chicago.[8] Jurisdictions that received award letters may accept the conditions and begin to draw down their funds.[9] Thus, in the absence of the full injunction imposed by the district court, Chicago's Byrne-JAG funding could be entirely disbursed to other jurisdictions while this litigation is pending.

Affirming the district court's preliminary injunction and lifting the partial stay will restore Chicago's ability to obtain complete relief. Once the full preliminary injunction is back in place, DOJ will be required to forego the challenged conditions entirely—in which case there is no reason for DOJ to continue withholding Chicago's award letter—or withhold all Byrne-JAG

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of Chicago, Sup. Ct. No. 17A-1379 (U.S. June 18, 2018); Decl. of Alan R. Hanson in Supp. of Defs.' Mot. for Summ. J. ¶ 8, *City of San Francisco v. Sessions*, No. 17-cv-4642 (N.D. Cal. Oct. 31, 2017), ECF No. 46-1.

[8] *See* DOJ, Office of Justice Programs, *Awards Made for "BJA FY 17 Edward Byrne Memorial Justice Assistance Grant (JAG) Program – State Solicitation*" (52 state-level awards); DOJ, Office of Justice Programs, *Awards Made for "BJA FY 2017 Edward Byrne Memorial Justice Assistance Grant (JAG) Program – Local Solicitation"* (789 local-level awards).

[9] *See* Supreme Court Stay App. at 37-38 (explaining that Byrne-JAG funding can be spent immediately).

funding that has not been disbursed, thus ensuring the availability of funds for Chicago should Chicago ultimately prevail.

DOJ does not dispute the interconnected nature of the Byrne-JAG disbursement scheme, nor does it deny that it could disburse Chicago's funds to another jurisdiction during the pendency of this litigation. *See* Br. at 24. DOJ's only explanation for why a limited injunction would fully protect Chicago's interests is to seize on a line from the dissent suggesting that limiting the injunction to Chicago could somehow benefit the city by enabling it to "'get[] more money.'" *See id.* at 24 (quoting *City of Chicago*, 888 F.3d at 299) (Manion, J., dissenting). But this misunderstands the nature of disbursements under Byrne-JAG. Under the statute's provisions for reallocation, some jurisdictions could well receive extra funding under Byrne-JAG if other jurisdictions do not receive grants, but Chicago is unlikely to fall into that first category so long as DOJ continues to withhold Chicago's award letter. Thus, the panel majority correctly concluded that an injunction barring DOJ's imposition of the grant conditions on all Byrne-JAG applicants was needed to preserve the district court's ability to afford Chicago complete relief should it ultimately prevail. *See City of Chicago*, 888 F.3d at 292.

Because the preliminary injunction was appropriately calibrated to protect Chicago's interests during this litigation, there is no merit to DOJ's contention (Br. at 12-15) that Chicago lacked standing to obtain the

injunction. The fact that the injunction happens to benefit nonparties is not unusual,[10] nor does it implicate the district court's jurisdiction to issue the relief. To be sure, Article III requires that a plaintiff have standing for each *claim* and each *form* of relief sought. *See, e.g.*, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). But once a party establishes standing for a claim and its entitlement to relief, the district court has discretion to design a remedy that fully protects the plaintiff's interests. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad . . . ."). As many of the cases cited by DOJ recognize[11] (Br. at 9-15), "an injunction is not necessarily made over-broad by extending benefit or protection to persons other than the prevailing parties in the lawsuit—even if it is not a class action—*if such breadth is necessary to give*

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[10] *See, e.g.*, Zayn Siddique, *Nationwide Injunctions*, 117 Colum. L. Rev. 2095, 2097 (2017) (collecting cases).

[11] *See, e.g.*, *Trump v. Hawaii*, 138 S. Ct. 2392, 2427 (2018) (Thomas, J., concurring) (noting that injunctions can properly benefit third parties when "that benefit [i]s merely a consequence of providing relief to the plaintiff"); *Gill v. Whitford*, 138 S. Ct. 1916, 1930 (2018) (recognizing that statewide injunctions may be necessary to vindicate individual voting rights); *McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997) ("[I]n reapportionment and school desegregation cases, for example, it is not possible to award effective relief to the plaintiffs without altering the rights of third parties").

the prevailing parties the relief to which they are entitled." *Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987).

B. The Scope of the Preliminary Injunction Is Consistent with Well-Settled Legal Principles Governing Equitable Relief.

Because the scope of the preliminary injunction was necessary in this case to remedy Chicago's injury, DOJ's various legal objections to nationwide injunctions generally are inapposite. Those objections are also wrong for a variety of reasons.

First, contrary to DOJ's suggestion (Br. at 17-18), the preliminary injunction in this case does not interfere in any way with the orderly development of the law. To be sure, the percolation of legal issues in the lower courts can be an important feature of our judicial process. But one of the primary rationales for seeking such diversity in judicial perspectives is "to gain the benefit of adjudication by different courts *in different factual contexts*." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (emphasis added). As the majority correctly found, this case "does not present the situation in which the courts will benefit from allowing the issue to percolate through additional courts," because it involves a "narrow issue of law," and the issues

are "not fact-dependent and will not vary from one locality to another." *City of Chicago*, 888 F.3d at 290-91.[12]

In any event, the preliminary injunction did not in fact stymie other courts from adjudicating the legality of the challenged conditions.[13] Five other lawsuits challenging the Byrne-JAG conditions were litigated while the district court's full preliminary injunction was in place, including two that were filed *after* the district court issued the preliminary injunction.[14] This

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[12] The dissent was wrong when it suggested that the majority's reasoning would justify a nationwide injunction in every statutory interpretation case. *See City of Chicago*, 888 F.3d at 297 (Manion, J., dissenting). The fact that a case involves a narrow legal question weighs in favor of a broad injunction, but a court must still consider the appropriateness of nationwide relief in light of the other preliminary injunction factors, such as the plaintiff's showing of irreparable harm and the balance of the equities.

[13] For this reason, DOJ misplaces its reliance (Br. at 19) on *United States v. Mendoza*, 464 U.S. 154 (1984), which held that the doctrine of nonmutual offensive collateral estoppel should not apply to the federal government, partly because estoppel deters the percolation of legal issues. In addition, DOJ's argument incorrectly conflates the consequences of estoppel and an injunction. *Mendoza* rejected the applicability of nonmutual offensive collateral estoppel against the federal government because that would "conclusive[ly]" preclude the government from advancing an argument that another court had already rejected. 464 U.S. at 158-60. While a nationwide injunction may bar the federal government from enforcing a particular policy, it does not preclude the government from defending that policy in other courts using arguments that other courts have previously rejected. And indeed, that is precisely what the federal government has done in the proliferating lawsuits over its new Byrne-JAG conditions.

[14] *See City of West Palm Beach v. Sessions*, No. 18-cv-80131 (S.D. Fla. Feb. 6, 2018), ECF No. 1 (complaint); *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289 (E.D. Pa. 2018) (permanently enjoining all three conditions);

pattern is not unusual. In recent litigation over the Deferred Action Childhood Arrivals program, a Maryland district court upheld the rescission of the program, even after district court judges in both California and New York issued a nationwide injunction enjoining the program's rescission and appellate review of those rulings was pending.[15]

Second, DOJ is mistaken in suggesting (Br. at 18-19) that allowing the district court's preliminary injunction to stand will undermine mechanisms for class-action relief. Class actions are a particularly poor vehicle for States and localities to vindicate their governmental and proprietary interests. While Congress may have expressed a preference for class actions in the context of private litigation, no such preference exists in the context of public litigation brought by States and localities. Rather, Congress has specifically exempted States from the class-action requirements imposed on private litigants. *See, e.g.*, *LG Display Co. v. Madigan*, 665 F.3d 768 (7th Cir. 2011)

California ex rel. Becerra v. Sessions, No. 17-cv-4701 (N.D. Cal. Aug. 14, 2017), ECF No. 1 (complaint); *City of San Francisco v. Sessions*, No. 17-cv-4642 (N.D. Cal. Aug. 11, 2017), ECF No. 1 (complaint); *City of Los Angeles v. Sessions*, No. 17-cv-7215 (C.D. Cal. Sept. 29, 2017), ECF No. 1 (complaint).

[15] *Compare Regents of the Univ. of Cal. v. U.S. Department of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. Jan. 9, 2018), *and Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. Feb. 13, 2018), *with Casa de Maryland v. United States Department of Homeland Sec.*, 284 F. Supp. 3d 758 (D. Md. Mar. 5, 2018).

(antitrust actions brought by States not subject to restrictions of the Class Action Fairness Act, 28 U.S.C. § 1332(d)).

These exemptions demonstrate Congress's recognition that governmental plaintiffs often seek to vindicate qualitatively different interests from private litigants, and should not be compelled to participate in class actions to vindicate those interests.[16] For example, in a class action, most class members must cede control of the litigation to the lead plaintiff. It is inconceivable that a sovereign State should be required to cede such control when seeking to vindicate its own institutional interests. Localities may have similar institutional interests in maintaining control of their own suits. *See, e.g.*, Charter of the City of New York, ch. 17, § 394 ("[T]he corporation counsel . . . shall have charge of all the law business of the city and its agencies and in which the city is interested.").

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[16] *See, e.g., United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 342-43 (2007) (recognizing States' special responsibility for the "health, safety, and welfare of [their] citizens"); *General Tel. Co. of the Nw., Inc. v. Equal Emp't Opportunity Comm'n*, 446 U.S. 318, 331 (1980) (finding EEOC exempt from class-action requirements, in part, because the agency sues in its own name to advance "the public interest").

C. The Equities and the Public Interest Support the Scope of the Preliminary Injunction.

District courts enjoy "sound discretion to consider the necessities of the public interest when fashioning injunctive relief." *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 496 (2001) (quotation marks omitted). Thus, "courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than . . . when only private interests are involved." *Virginian Ry. Co. v. System Fed'n No. 40, Ry. Employees Dep't of Am. Fed'n of Labor*, 300 U.S. 515, 552 (1937). Here, the majority panel correctly concluded that the equities and the public interest support the scope of the district court's preliminary injunction. *See City of Chicago*, 888 F.3d at 291-92.

As an initial matter, the impact on jurisdictions "forced to comply with" the new conditions "could be devastating." *Id.* at 291. A number of States and localities have concluded that they can best protect the safety of their residents by promoting relationships of trust with immigrant communities. *See id.* Requiring jurisdictions to comply with the challenged conditions could compromise that trust, which "once destroyed by the mandated cooperation and communication with the federal immigration authorities, would not easily be restored." *Id.*

Forgoing hundreds of thousands or millions of dollars of Byrne-JAG funding is not a reasonable alternative. Like Chicago, the amici States are longtime recipients of federal law-enforcement block grants, and they have used these funds to support a variety of critical law-enforcement and criminal-justice projects. For example, New York has used Byrne-JAG funding to support a multicounty program to combat gun violence, improve criminal records systems, enhance forensic laboratories, and support prosecution and defense services.[17] California has used Byrne-JAG funds for education, employment, and substance abuse services; prevention and intervention initiatives for high-risk students; and diversion and re-entry programs.[18] Rhode Island has used its Byrne-JAG funds to support the Rhode Island State Police, the Rhode Island Department of Corrections, victim-service programs, family-service programs, and programs designed to help at-risk juveniles. The District of Columbia has used Byrne-JAG funds to improve re-entry services for formerly incarcerated women, and to support anti-truancy and juvenile delinquency programs. New Jersey has used Byrne-

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[17] *See* N.Y. Div. of Criminal Justice, *Application for Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds—FFY 2016*, at 4-9 (June 30, 2016).

[18] *See* Br. for States of California and Illinois as Amici Curiae at 11-12, *City of Chicago v. Sessions*, No. 17-2991 (7th Cir. Oct. 18, 2017), ECF No. 25.

JAG funding to support multi-jurisdictional gang, gun and narcotics task forces, training for prosecutors, and a body-worn camera initiative. Massachusetts plans to use its 2017 Byrne-JAG funds to reduce gun violence, combat the opioid crisis, and promote community-based policing programs.[19] And Connecticut plans to use 2017 Byrne-JAG funds to reduce recidivism, prevent gun violence, provide training to mentally ill offenders, and provide treatment for offenders addicted to opioids and heroin.[20] The preliminary injunction preserves the ability of the amici States to support these programs without jeopardizing the States' relationships with immigrant communities.

While the equities strongly support the scope of the injunction, DOJ has not articulated any countervailing interest specific to this case that would necessitate a narrower injunction. DOJ makes only legal objections to the scope of nationwide injunctions generally. *See* Br. at 15-24. But as explained above, those objections are both inapplicable and wrong.[21] See *supra* at 10-13.

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[19] *See* Commonwealth of Mass. Exec. Office of Pub. Safety & Sec., Office of Grants & Research, *Edward J. Byrne Memorial Justice Assistance Grant Federal Fiscal Year 2017*, at 4-43 (2017).

[20] Conn. Office of Policy & Mgmt., *Request for Public Comment, FY 2017 Justice Assistance Grant Program*, at 5-6 (2017).

[21] The dissent was wrong when it suggested that an injunction was not warranted because the district court found that both sides had strong public policy arguments. *See City of Chicago*, 888 F.3d at 297-98 (Manion, J., dissenting). As the district court explained in its decision denying a stay, the equities favored the injunction because it would be inequitable to limit the

Moreover, it is clear that DOJ has no legitimate interest in enforcing the challenged conditions during the pendency of this litigation because it has no authority to impose them. As case law makes clear, the federal government has no legitimate interest in enforcing grant conditions that are unlawful. *See, e.g.*, *South Dakota v. Dole*, 483 U.S. 203 (1987). And all three judges on the panel—like every other judge who has considered the question—recognized that the challenged conditions are almost certainly unlawful because DOJ lacks authority to impose them on any Byrne-JAG applicant. *See City of Chicago*, 888 F.3d 283-87 (majority), 295-96 (dissent).[22] DOJ has not challenged that ruling for the purposes of this Court's en banc review.[23] DOJ thus lacks any legitimate interest in enforcing the conditions during the

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injunction to Chicago because "the proposed 'fix' would allow the Attorney General to impose what this Court has ruled are likely unconstitutional conditions across a number of jurisdictions prior to a decision on the merits." *City of Chicago v. Sessions*, No. 17-cv-5720, 2017 WL 4572208, at *3 (N.D. Ill. Oct. 13, 2017).

[22] *See also City of Chicago v. Sessions*, No. 17-cv-5720, 2018 WL 3608564 (N.D. Ill. July 27, 2018); *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 339-45 (E.D. Pa. 2018); Order Denying Mot. to Dismiss, *California ex rel. Becerra v. Sessions*, No. 17-cv-4701 (N.D. Cal. Mar. 5, 2018), ECF No. 88; Order Denying Mot. to Dismiss, *City of San Francisco v. Sessions*, No. 17-cv-4642 (N.D. Cal. Mar. 5, 2018), ECF No. 78.

[23] Although DOJ states that it disagrees with the panel's unanimous ruling that it lacks authority to impose the conditions, DOJ has not sought en banc review of that question, although it could have done so when it sought en banc review of the scope of the injunction.

pendency of the litigation, and it has not articulated any other interest that would justify limiting the scope of the injunction based on the facts of this case.

CONCLUSION

The partial stay of the preliminary injunction should be vacated, and DOJ's application to vacate the stay insofar as it extends beyond Chicago should be denied.

Dated: New York, NY
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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 29 and 32(a) of the Federal Rules of Appellate Procedure, Caroline A. Olsen, counsel for amici curiae States of New York et al., hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 4,372 words and complies with the typeface requirements and length limits of Rules 29 and 32(a)(5)-(7) and the Local Rules of the Seventh Circuit.

/s/ Caroline A. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the accompanying Brief for Amici Curiae States of New York et al. with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system on August 10, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 10, 2018
New York, NY

/s/ Caroline A. Olsen